

# **Exhibit C**

1 HONORABLE THOMAS O. RICE  
2

3 J. CHRISTOPHER LYNCH, WSBA #17462  
4 JEFFREY R. SMITH, WSBA #37460  
5 RHETT V. BARNEY, WSBA #44764  
6 LEE & HAYES, PLLC  
7 601 W. Riverside Avenue, Suite 1400  
8 Spokane, WA 99201  
9 Phone: (509) 324-9256  
10 Fax: (509) 323-8979  
11 Emails: [chris@leehayes.com](mailto:chris@leehayes.com)  
[jeffreys@leehayes.com](mailto:jeffreys@leehayes.com)  
[rhettb@leehayes.com](mailto:rhettb@leehayes.com)

12 *Counsel for Defendant Ryan Lamberson*

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
419  
420  
421  
422  
423  
424  
425  
426  
427  
428  
429  
429  
430  
431  
432  
433  
434  
435  
436  
437  
438  
439  
439  
440  
441  
442  
443  
444  
445  
446  
447  
448  
449  
449  
450  
451  
452  
453  
454  
455  
456  
457  
458  
459  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
469  
469  
470  
471  
472  
473  
474  
475  
476  
477  
478  
479  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488  
489  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
529  
530  
531  
532  
533  
534  
535  
536  
537  
538  
539  
539  
540  
541  
542  
543  
544  
545  
546  
547  
548  
549  
549  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
559  
560  
561  
562  
563  
564  
565  
566  
567  
568  
569  
569  
570  
571  
572  
573  
574  
575  
576  
577  
578  
579  
579  
580  
581  
582  
583  
584  
585  
586  
587  
588  
589  
589  
590  
591  
592  
593  
594  
595  
596  
597  
598  
599  
599  
600  
601  
602  
603  
604  
605  
606  
607  
608  
609  
609  
610  
611  
612  
613  
614  
615  
616  
617  
618  
619  
619  
620  
621  
622  
623  
624  
625  
626  
627  
628  
629  
629  
630  
631  
632  
633  
634  
635  
636  
637  
638  
639  
639  
640  
641  
642  
643  
644  
645  
646  
647  
648  
649  
649  
650  
651  
652  
653  
654  
655  
656  
657  
658  
659  
659  
660  
661  
662  
663  
664  
665  
666  
667  
668  
669  
669  
670  
671  
672  
673  
674  
675  
676  
677  
678  
679  
679  
680  
681  
682  
683  
684  
685  
686  
687  
688  
689  
689  
690  
691  
692  
693  
694  
695  
696  
697  
698  
699  
699  
700  
701  
702  
703  
704  
705  
706  
707  
708  
709  
709  
710  
711  
712  
713  
714  
715  
716  
717  
718  
719  
719  
720  
721  
722  
723  
724  
725  
726  
727  
728  
729  
729  
730  
731  
732  
733  
734  
735  
736  
737  
738  
739  
739  
740  
741  
742  
743  
744  
745  
746  
747  
748  
749  
749  
750  
751  
752  
753  
754  
755  
756  
757  
758  
759  
759  
760  
761  
762  
763  
764  
765  
766  
767  
768  
769  
769  
770  
771  
772  
773  
774  
775  
776  
777  
778  
779  
779  
780  
781  
782  
783  
784  
785  
786  
787  
788  
789  
789  
790  
791  
792  
793  
794  
795  
796  
797  
798  
799  
799  
800  
801  
802  
803  
804  
805  
806  
807  
808  
809  
809  
810  
811  
812  
813  
814  
815  
816  
817  
818  
819  
819  
820  
821  
822  
823  
824  
825  
826  
827  
828  
829  
829  
830  
831  
832  
833  
834  
835  
836  
837  
838  
839  
839  
840  
841  
842  
843  
844  
845  
846  
847  
848  
849  
849  
850  
851  
852  
853  
854  
855  
856  
857  
858  
859  
859  
860  
861  
862  
863  
864  
865  
866  
867  
868  
869  
869  
870  
871  
872  
873  
874  
875  
876  
877  
878  
879  
879  
880  
881  
882  
883  
884  
885  
886  
887  
888  
889  
889  
890  
891  
892  
893  
894  
895  
896  
897  
898  
899  
899  
900  
901  
902  
903  
904  
905  
906  
907  
908  
909  
909  
910  
911  
912  
913  
914  
915  
916  
917  
918  
919  
919  
920  
921  
922  
923  
924  
925  
926  
927  
928  
929  
929  
930  
931  
932  
933  
934  
935  
936  
937  
938  
939  
939  
940  
941  
942  
943  
944  
945  
946  
947  
948  
949  
949  
950  
951  
952  
953  
954  
955  
956  
957  
958  
959  
959  
960  
961  
962  
963  
964  
965  
966  
967  
968  
969  
969  
970  
971  
972  
973  
974  
975  
976  
977  
978  
979  
979  
980  
981  
982  
983  
984  
985  
986  
987  
988  
989  
989  
990  
991  
992  
993  
994  
995  
996  
997  
998  
999  
1000  
1001  
1002  
1003  
1004  
1005  
1006  
1007  
1008  
1009  
1009  
1010  
1011  
1012  
1013  
1014  
1015  
1016  
1017  
1018  
1019  
1019  
1020  
1021  
1022  
1023  
1024  
1025  
1026  
1027  
1028  
1029  
1029  
1030  
1031  
1032  
1033  
1034  
1035  
1036  
1037  
1038  
1039  
1039  
1040  
1041  
1042  
1043  
1044  
1045  
1046  
1047  
1048  
1049  
1049  
1050  
1051  
1052  
1053  
1054  
1055  
1056  
1057  
1058  
1059  
1059  
1060  
1061  
1062  
1063  
1064  
1065  
1066  
1067  
1068  
1069  
1069  
1070  
1071  
1072  
1073  
1074  
1075  
1076  
1077  
1078  
1079  
1079  
1080  
1081  
1082  
1083  
1084  
1085  
1086  
1087  
1088  
1089  
1089  
1090  
1091  
1092  
1093  
1094  
1095  
1096  
1097  
1098  
1099  
1099  
1100  
1101  
1102  
1103  
1104  
1105  
1106  
1107  
1108  
1109  
1109  
1110  
1111  
1112  
1113  
1114  
1115  
1116  
1117  
1118  
1119  
1119  
1120  
1121  
1122  
1123  
1124  
1125  
1126  
1127  
1128  
1129  
1129  
1130  
1131  
1132  
1133  
1134  
1135  
1136  
1137  
1138  
1139  
1139  
1140  
1141  
1142  
1143  
1144  
1145  
1146  
1147  
1148  
1149  
1149  
1150  
1151  
1152  
1153  
1154  
1155  
1156  
1157  
1158  
1159  
1159  
1160  
1161  
1162  
1163  
1164  
1165  
1166  
1167  
1168  
1169  
1169  
1170  
1171  
1172  
1173  
1174  
1175  
1176  
1177  
1178  
1179  
1179  
1180  
1181  
1182  
1183  
1184  
1185  
1186  
1187  
1188  
1189  
1189  
1190  
1191  
1192  
1193  
1194  
1195  
1196  
1197  
1198  
1199  
1199  
1200  
1201  
1202  
1203  
1204  
1205  
1206  
1207  
1208  
1209  
1209  
1210  
1211  
1212  
1213  
1214  
1215  
1216  
1217  
1218  
1219  
1219  
1220  
1221  
1222  
1223  
1224  
1225  
1226  
1227  
1228  
1229  
1229  
1230  
1231  
1232  
1233  
1234  
1235  
1236  
1237  
1238  
1239  
1239  
1240  
1241  
1242  
1243  
1244  
1245  
1246  
1247  
1248  
1249  
1249  
1250  
1251  
1252  
1253  
1254  
1255  
1256  
1257  
1258  
1258  
1259  
1259  
1260  
1261  
1262  
1263  
1264  
1265  
1266  
1267  
1268  
1269  
1269  
1270  
1271  
1272  
1273  
1274  
1275  
1276  
1277  
1278  
1279  
1279  
1280  
1281  
1282  
1283  
1284  
1285  
1286  
1287  
1288  
1289  
1289  
1290  
1291  
1292  
1293  
1294  
1295  
1296  
1297  
1298  
1299  
1299  
1300  
1301  
1302  
1303  
1304  
1305  
1306  
1307  
1308  
1309  
1309  
1310  
1311  
1312  
1313  
1314  
1315  
1316  
1317  
1318  
1319  
1319  
1320  
1321  
1322  
1323  
1324  
1325  
1326  
1327  
1328  
1329  
1329  
1330  
1331  
1332  
1333  
1334  
1335  
1336  
1337  
1338  
1339  
1339  
1340  
1341  
1342  
1343  
1344  
1345  
1346  
1347  
1348  
1349  
1349  
1350  
1351  
1352  
1353  
1354  
1355  
1356  
1357  
1358  
1359  
1359  
1360  
1361  
1362  
1363  
1364  
1365  
1366  
1367  
1368  
1369  
1369  
1370  
1371  
1372  
1373  
1374  
1375  
1376  
1377  
1378  
1379  
1379  
1380  
1381  
1382  
1383  
1384  
1385  
1386  
1387  
1388  
1389  
1389  
1390  
1391  
1392  
1393  
1394  
1395  
1396  
1397  
1398  
1399  
1399  
1400  
1401  
1402  
1403  
1404  
1405  
1406  
1407  
1408  
1409  
1409  
1410  
1411  
1412  
1413  
1414  
1415  
1416  
1417  
1418  
1419  
1419  
1420  
1421  
1422  
1423  
1424  
1425  
1426  
1427  
1428  
1429  
1429  
1430  
1431  
1432  
1433  
1434  
1435  
1436  
1437  
1438  
1439  
1439  
1440  
1441  
1442  
1443  
1444  
1445  
1446  
1447  
1448  
1449  
1449  
1450  
1451  
1452  
1453  
1454  
1455  
1456  
1457  
1458  
1459  
1459  
1460  
1461  
1462  
1463  
1464  
1465  
1466  
1467  
1468  
1469  
1469  
1470  
1471  
1472  
1473  
1474  
1475  
1476  
1477  
1478  
1479  
1479  
1480  
1481  
1482  
1483  
1484  
1485  
1486  
1487  
1488  
1489  
1489  
1490  
1491  
1492  
1493  
1494  
1495  
1496  
1497  
1498  
1499  
1499  
1500  
1501  
1502  
1503  
1504  
1505  
1506  
1507  
1508  
1509  
1509  
1510  
1511  
1512  
1513  
1514  
1515  
1516  
1517  
1518  
1519  
1519  
1520  
1521  
1522  
1523  
1524  
1525  
1526  
1527  
1528  
1529  
1529  
1530  
1531  
1532  
1533  
1534  
1535  
1536  
1537  
1538  
1539  
1539  
1540  
1541  
1542  
1543  
1544  
1545  
1546  
1547  
1548  
1549  
1549  
1550  
1551  
1552  
1553  
1554  
1555  
1556  
1557  
1558  
1559  
1559  
1560  
1561  
1562  
1563  
1564  
1565  
1566  
1567  
1568  
1569  
1569  
1570  
1571  
1572  
1573  
1574  
1575  
1576  
1577  
1578  
1579  
1579  
1580  
1581  
1582  
1583  
1584  
1585  
1586  
1587  
1588  
1589  
1589  
1590  
1591  
1592  
1593  
1594  
1595  
1596  
1597  
1598  
1599  
1599  
1600  
1601  
1602  
1603  
1604  
1605  
1606  
1607  
1608  
1609  
1609  
1610  
1611  
1612  
1613  
1614  
1615  
1616  
1617  
1618  
1619  
1619  
1620  
1621  
1622  
1623  
1624  
1625  
1626  
1627  
1628  
1629  
1629  
1630  
1631  
1632  
1633  
1634  
1635  
1636  
1637  
1638  
1639  
1639  
1640  
1641  
1642  
1643  
1644  
1645  
1646  
1647  
1648  
1649  
1649  
1650  
1651  
1652  
1653  
1654  
1655  
1656  
1657  
1658  
1659  
1659  
1660  
1661  
1662  
1663  
1664  
1665  
1666  
1667  
1668  
1669  
1669  
1670  
1671  
1672  
1673  
1674  
1675  
1676  
1677  
1678  
1679  
1679  
1680  
1681  
1682  
1683  
1684  
1685  
1686  
1687  
1688  
1689  
1689  
1690  
1691  
1692  
1693  
1694  
1695  
1696  
1697  
1698  
1699  
1699  
1700  
1701  
1702  
1703  
1704  
1705  
1706  
1707  
1708  
1709  
1709  
1710  
1711  
1712  
1713  
1714  
1715  
1716  
1717  
1718  
1719  
1719  
1720  
1721  
1722  
1723  
1724  
1725  
1726  
1727  
1728  
1729  
1729  
1730  
1731  
1732  
1733  
1734  
1735  
1736  
1737  
1738  
1739  
1739  
1740  
1741  
1742  
1743  
1744  
1745  
1746  
1747  
1748  
1749  
1749  
1750  
1751  
1752  
1753  
1754  
1755  
1756  
1757  
1758  
1759  
1759  
1760  
1761  
1762  
1763  
1764  
1765  
1766  
1767  
1768  
1769  
1769  
1770  
1771  
1772  
1773  
1774  
1775  
1776  
1777  
1778  
1779  
1779  
1780  
1781  
1782  
1783  
1784  
1785  
1786  
1787  
1788  
1789  
1789  
1790  
1791  
1792  
1793  
1794  
1795  
1796  
1797  
1798  
1799  
1799  
1800  
1801  
1802  
1803  
1804  
1805  
1806  
1807  
1808  
1809  
1809  
1810  
1811  
1812  
1813  
1814  
1815  
1816  
1817  
1818  
1819  
1819  
1820  
1821  
1822  
1823  
1824  
1825  
1826  
1827  
1828  
1829  
1829  
1830  
1831  
1832  
1833  
1834  
1835  
1836  
1837  
1838  
1839  
1839  
1840  
1841  
1842  
1843  
1844  
1845  
1846  
1847  
1848  
1849  
1849  
1850  
1851  
1852  
1853  
1854  
1855  
1856  
1857  
1858  
1859  
1859  
1860  
1861  
1862  
1863  
1864  
1865  
1866  
1867  
1868  
1869<br

1       2. I certify that I have attempted in good faith to obtain the discovery  
2 sought prior to bringing this Motion to Compel. I have spoken with counsel for  
3 plaintiff Carl Crowell over the telephone and I have written multiple emails to Mr.  
4 Crowell and Ms. VanderMay demanding the requested documents, all to no avail.  
5 Plaintiff has shown no willingness to provide the documents, to debate the claimed  
6 privilege, or even to provide the required privilege log under Fed. R. Civ. P.  
7 26(b)(5)(A). Today, June 13, 2014, I spoke with attorney David Lowe of Seattle  
8 who told me he may become attorney for Elf-Man, LLC in this case. I informed  
9 him of the outstanding discovery and I was not informed that he had any authority  
10 to provide the documents or privilege logs.

11       3. Attached as Exhibit A is a true and correct copy of the Second Set of  
12 Requests for Production and the Responses Thereto, including a copy of the  
13 envelope in which they were received. The Requests were served on April 22,  
14 2014. The responses were received on May 30, 2014, as seen by the copy received  
15 date stamp from my firm. The responses were postmarked May 28, 2014, as seen  
16 by the postmark on the envelope.

17       4.     On April 21, 2014, I wrote to counsel for plaintiff and informed her  
18 that we had discovered the Gerephil Molina presentation about APMC (“the  
19 APMC Presentation”) which is found at:

20 | [http://prezi.com/b\\_f7djco81ri/copy-of-themanako123/](http://prezi.com/b_f7djco81ri/copy-of-themanako123/).

21 5. Because the APMC Presentation differs significantly from the  
22 explanation of the relationship of the plaintiff to the investigators provided by

DECLARATION OF  
J. CHRISTOPHER LYNCH - 2

LEE & HAYES, PLLC  
601 West Riverside Avenue, Suite 1400  
Spokane, Washington 99201  
Telephone: (509)324-9256 Fax: (509)323-8979

1 plaintiff in response to Request for Production No. 15, and because the APMC  
2 Presentation indicates that APMC is not only the investigator, but the source of  
3 funding and of the strategy and pleadings in this matter, and because the APMC  
4 Presentation expressly references plaintiff's identified witness Mr. Macek, I  
5 prepared the three targeted Requests for Production about APMC that are the  
6 subject of this Motion to Compel.

7 6. My April 21, 2014, email to plaintiff's counsel forewarned her about  
8 the three new requests for production. I specifically addressed the APMC  
9 Presentation and how it leads to the conclusion there could be no privilege for  
10 APMC correspondence. I requested counsel for plaintiff to provide an explanation  
11 of privilege if there could be one. A copy of this email redacted to eliminate  
12 confidential material is attached as Exhibit B.

13 7. I wrote once more on the subject on April 22, 2014, serving the  
14 discovery and explaining why the requested material could not be privileged. We  
15 invited a dialogue on it, telling counsel we assumed her silence to indicate  
16 concurrence with our presumptions. A copy of this email redacted to eliminate  
17 confidential material is attached as Exhibit C.

18 8. Plaintiff's counsel responded to me the next day on April 23, 2014,  
19 refusing to address the issue of privilege and then foreshadowing the failure to  
20 produce discovery we predicted would come. Here is a quote from her April 23,  
21 2014 email on the point:

1 Please understand further that I am not at your beck and call and will  
2 respond to communications from your office as my calendar and other  
3 obligations permit.

4 With respect to additional discovery, the way this process works is  
5 that you should serve discovery requests pursuant to the Federal Rules  
6 of Civil Procedure and we will respond in a timely manner. To the  
7 extent that you seek material that is not subject to discovery, please  
8 expect us to file our objections. Any issues that cannot be resolved by  
9 counsel will proceed to Judge Rice. You can, of course, continue to  
10 try to circumvent this process but you will not succeed. We will  
11 respond to your second request for production in the ordinary course  
12 and following this process.

13 9. Then, as predicted, no documents were produced. Additionally,  
14 although plaintiff's counsel indicated she would "respond in a timely manner" the  
15 "responses" were not received until May 30, 2014. If plaintiff desired a sincere  
16 discussion about the merits of its objections, it could have served the objections  
17 upon receipt of the discovery, but plaintiff chose to wait until past the last minute,  
18 again attempting to avoid an obligation to shine light on its cloaked investigators.

19 10. I noticed that the discovery responses received on May 30, 2014, bore  
20 the May 28, 2014, postmark and that this was not consistent with the May 22,  
21 2014, Certificate of Service. I knew from my experience that failure to timely  
22 serve discovery is a waiver of objections in the Federal system, so I knew this  
discrepancy was substantively important.

19 11. Consequently, on the date of receipt of these documents, I wrote to  
20 counsel for plaintiff and offered her an opportunity to correct the Certificate of  
21 Service, which seemed as if it must be in error, since causing something to be  
22

1 served on May 22 would not result in a postmark of May 28. This email is attached  
2 as Exhibit D.

3 12. Counsel for plaintiff replied on May 30, 2014, and provided some  
4 hearsay that her assistant mailed the document as instructed on May 22, 2014, and  
5 that the fault must lie with the post office. This email is attached as Exhibit E.

6 13. This explanation did not persuade me that the service was completed  
7 on May 22. I checked other discovery mailed by plaintiff's counsel to my law firm.  
8 My firm "copy receive stamps" incoming pleadings so I compared other pleadings  
9 from plaintiff's counsel and found that none of them had an eight day delay from  
10 the stated Certificate of Service to the delivery date. I also checked and discovered  
11 that other discovery served by plaintiff had been simultaneously mailed and  
12 emailed to my firm with a Certificate of Service showing both methods of service,  
13 but this Second Set of Requests for Production had not been simultaneously  
14 emailed as it was mailed; in fact, it had not been emailed at all. This made me more  
15 suspicious that counsel for plaintiff might have wished that the responses were sent  
16 on May 22, but likely they were not. It occurred to me that one way to reconcile  
17 the discrepancy would be for the assistant that was the subject of the May 30  
18 hearsay explanation to provide his or her own declaration as to the events of  
19 May 22, so that the real circumstances of the service could be determined. I  
20 responded on that same day, May 30, pointing out the concerns we had with  
21 counsel's curt explanation that the fault lied with the post office. I noted the normal  
22 time to obtain mail from her offices was not eight days, and I noted that this

DECLARATION OF  
J. CHRISTOPHER LYNCH - 5

LEE & HAYES, PLLC  
601 West Riverside Avenue, Suite 1400  
Spokane, Washington 99201  
Telephone: (509)324-9256 Fax: (509)323-8979

1 discovery was not simultaneously emailed as other discovery had been. I requested  
2 that a sworn Declaration from the un-named assistant would go a long way toward  
3 us accepting the explanation as the truth. This email is attached at Exhibit F.

4 14. I assumed that the un-named assistant would either (i) be quite willing  
5 to provide a detailed declaration (assuming the document was actually served on  
6 May 22), or (ii) that the request would force the issue and expose that perhaps it  
7 was not actually served on May 22, and the assistant would not be willing to  
8 provide a detailed declaration to support Ms. VanderMay's purported May 22  
9 Certificate of Service.

10 15. If the document had actually been served on May 22, then I expected  
11 a declaration that included recollection of the attorney signing the document on  
12 that date, the envelope being prepared and stamped on that date, some explanation  
13 of how the firm's mail service worked, whether it was picked up by USPS or  
14 dropped off at USPS, and at what time. I assumed if it had actually been served on  
15 May 22 that this declaration would talk about the fate of other mail sent at the  
16 same time from this firm – i.e. presumably, if this document took six days to get a  
17 postmark, then others did too. In other words, I assumed there might be an  
18 explanation of what other mail from the VanderMay firm from May 22, 2014, met  
19 the same fate. Or if the fault were with a particular box or office, maybe there  
20 would have been other users of the same USPS box or office that experienced the  
21 fate of this six day delay. A six day delay in the mail could affect many people and  
22 important matters such as bills and contracts and rent and the like and might even

1 be local news in Salem. But no such declaration of the un-named assistant was  
2 provided.

3 16. On Monday, June 2, 2014, I received a telephone call from Carl  
4 Crowell, who stated he was “non-appearing” counsel for Elf-Man, LLC. I spoke  
5 with Mr. Crowell for 44 minutes. He told me that Ms. VanderMay was going to  
6 withdraw from the matter and that he would attend to the urgent issues which he  
7 asked me to identify for him. I identified the postmark discrepancy as one of the  
8 urgent issues. I identified that a Declaration of the person who actually served the  
9 document would be helpful in resolving the substantive discrepancy. Mr. Crowell  
10 wrote me an email after the call on June 2, 2014, and asked for a copy of my letter  
11 to counsel about the postmark issue “and I will see that it is addressed.”

12 17. On that same June 2, 2014, I replied to Mr. Crowell and provided my  
13 correspondence with Ms. VanderMay on the postmark issue as he requested. A  
14 copy of this email redacted to eliminate confidential material is attached as Exhibit  
15 G. This email explained the substantive importance of the Certificate of Service  
16 issue and demanded the discovery or the privilege logs:

17 The APMC discovery is important. Please review the “prezi”  
18 presentation of Mr. Gerephil Molina of APMC Cebu about which we  
19 became aware after counsel gave us the implausible explanation under  
20 RFP #15. This 700 page expose seems to explain the back office of  
21 these matters -- APMC doing the uploading, preparing the pleadings,  
22 doing the discovery, all from Germany or the Philippines. None of  
this can be privileged as plaintiff claims. And the May 22 Declaration  
of Service vs the May 28 postmark is critical on this point. If the  
objections are waived, then we expect the documents immediately. If  
the objections are not waived, then we expect the privilege log

1 immediately and our first order of business will be our required LR 37  
2 conference on the production.

3 Mr. Crowell has not again contacted me about the Elf-Man case to provide  
4 any explanation of the postmark or to discuss production of the documents or the  
privilege log. No Declaration of Ms. Vandermay's assistant has been provided.

5 18. Even though I had written to Mr. Crowell on June 2, 2014, Ms.  
6 VanderMay replied to me on June 3, 2014:

7 Our office practice for outgoing mail is as follows: mail that is ready  
8 by the time of our postal delivery is given to our mail carrier and mail  
9 that is ready later in the day is taken to a mailbox by one of our office  
10 staff. The location of the box varies depending upon what other  
11 delivery assignments the staff person has on a particular day.

12 No declaration of the un-named assistant was provided, and no details about  
13 the events (or non-events) of May 22 were provided, like what mailbox was used  
14 and what other mail met the similar fate. The requested privilege log was also not  
provided.

15 19. On that same date, June 3, 2014, Ms. VanderMay filed her Motion to  
16 Withdraw citing ethical differences with "plaintiff's representatives." ECF No. 55  
17 at page 2. Note that the identical language is used in the Motion to Withdraw in  
18 The Thompsons Film case, Case No. 2:13-cv-00126-TOR, ECF No. 103 at page 2,  
19 a case with an entirely different plaintiff. Who are these "plaintiff's  
20 representatives" with whom plaintiff's counsel has its ethical differences? How  
21 could any new lawyer take the case and not suffer the same ethical issues?

1       20. I remain unconvinced that the responses were served on May 22,  
2 2014, despite Ms. VanderMay's Certificate of Service to the contrary.

3       21. Today, June 13, 2014, I spoke with attorney David Lowe of Seattle  
4 who told me he may become attorney for Elf-Man, LLC in this case. We spoke for  
5 66 minutes. Mr. Lowe told me that the deposition of Mr. Lamberson scheduled for  
6 Thursday, June 19 would not happen because he could not make it. He also told me  
7 that the Fed. R. Civ. P. 30(b)(6) Deposition of Elf-Man, LLC would not happen on  
8 Friday, June 20, 2014, because Elf-Man, LLC could not make it. A copy of the  
9 30(b)(6) Notice is attached as Exhibit H.

10      22. I told Mr. Lowe it was no surprise that Elf-Man, LLC would not  
11 attend the noted 30(b)(6) deposition, and it was no surprise that plaintiff never  
12 noted Mr. Lamberson's deposition for the agreed June 19, 2014 date. It is no  
13 surprise because plaintiff has no real desire to participate in the merits of this  
14 matter, they are just pretending they wish to depose Mr. Lamberson and inspect his  
15 machine. This case was filed more than 14 months ago. There has been no sincere  
16 effort to take Mr. Lamberson's deposition, just a transparent request by plaintiff for  
17 a "discovery plan" to stop defendant from discovery while plaintiff pretends to  
18 want to take Mr. Lamberson's deposition. Recall the May 9, 2014, Discovery  
19 Conference Ms. VanderMay initiated with the Court wherein plaintiff requested  
20 that all discovery be stayed until plaintiff could depose Mr. Lamberson and inspect  
21 his machine. Defendant submitted an *in camera* letter dated May 8, 2014,  
22 explaining that Mr. Lamberson's employer required him to request time off work

1 in advance, but that we had done that and had offered several days for deposition,  
2 and that the parties had agreed to Thursday, June 19, 2014. Mr. Smith of my firm  
3 explained this to the Court in that May 9, 2014 hearing, expressly mentioning the  
4 Fed. R. Civ. P. 30(b)(6) deposition of Elf-Man, LLC for the next date. Recall that  
5 the Court denied the request to allow only plaintiff's discovery to go forward, and  
6 the Court acknowledged that taking the 30(b)(6) at the same time made sense. Now  
7 that plaintiff's "discovery plan" request has been denied by the court, it is no  
8 surprise that plaintiff has fallen silent on its representations that efficient  
9 administration of justice demands a prompt deposition of Mr. Lamberson. It is no  
10 surprise that Mr. Lowe has represented to me that Elf-Man, LLC will not appear  
11 for the noted deposition next Friday.

12       23. It appears plaintiff has an intractable problem: it has representatives  
13 that are apparently trying to force plaintiff's counsel into actions the counsel  
14 cannot undertake in good faith. Plaintiff has repeatedly failed to allow discovery  
15 of the basic facts of the case, and I cannot imagine how these representatives will  
16 ever "allow" such discovery in this "severed" case when there are lawsuits against  
17 hundreds of people in our state alone based on the same inadmissible evidence of  
18 an imperceptible bit harvested by an unlicensed investigator in another country  
19 from an IP address but with no corroboration that any identifiable person sent the  
20 imperceptible bit. For example, even if the Court were to grant our pending Motion  
21 to Compel the deposition of the German investigators in Spokane, ECF No. 50, we  
22 sincerely doubt the "plaintiff's representatives" would be cooperative about

1 compliance with the Order, given the reluctance to date to comply with discovery  
2 requests and the Court's Order, ECF No. 31, to explain the relationship with the  
3 investigators. On behalf of Mr. Lamberson, we respectfully request that the Court  
4 Order plaintiff to comply with discovery, award costs and attorneys fees. We also  
5 respectfully request that plaintiff's case be dismissed with prejudice, and that Mr.  
6 Lamberson be declared the prevailing party such that he can pursue costs,  
7 attorney's fees and monetary sanctions under 17 U.S.C. §505, 28 U.S.C. §1927,  
8 and Fed. R. Civ. P. 11.

9 I declare under penalty of perjury under the laws of the United States that  
10 the foregoing is true and correct.

DATED this 13<sup>th</sup> day of June, 2014, in Spokane, Washington.

## LEE & HAYES, PLLC

By: s/ J. Christopher Lynch

J. Christopher Lynch, WSBA #17462  
601 W. Riverside Avenue, Suite 1400  
Spokane, WA 99201  
Phone: (509) 324-9256  
Fax: (509) 323-8979  
Email: [chris@leehayes.com](mailto:chris@leehayes.com)

*Counsel for Defendant Ryan Lamberson*

DECLARATION OF  
J. CHRISTOPHER LYNCH - 11

LEE & HAYES, PLLC  
601 West Riverside Avenue, Suite 1400  
Spokane, Washington 99201  
Telephone: (509)324-9256 Fax: (509)323-8979

## **CERTIFICATE OF SERVICE**

I hereby certify that on the 13<sup>th</sup> day of June, 2014, I caused to be electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Maureen C. VanderMay

[efile@vandermaylawfirm.com](mailto:efile@vandermaylawfirm.com)

LEE & HAYES, PLLC

By: *s/ J. Christopher Lynch*

J. Christopher Lynch, WSBA #17462  
601 W. Riverside Avenue, Suite 1400  
Spokane, WA 99201  
Phone: (509) 324-9256  
Email: [chris@leehayes.com](mailto:chris@leehayes.com)

DECLARATION OF  
J. CHRISTOPHER LYNCH - 12

LEE & HAYES, PLLC  
601 West Riverside Avenue, Suite 1400  
Spokane, Washington 99201  
Telephone: (509)324-9256 Fax: (509)323-8979

# EXHIBIT B

DECLARATION OF  
J. CHRISTOPHER LYNCH - 28

**From:** Chris Lynch  
**Sent:** Monday, April 21, 2014 3:09 PM  
**To:** Chris Lynch; elfmanwa@vandermaylawfirm.com  
**Subject:** [REDACTED]

Ms. VanderMay:

[REDACTED] Here is Mr. Molina's 700 page expose of APMC and its Philippines back office. We are surprised you are surprised, [REDACTED] [REDACTED] Mr. Molina's explanation both appear to show that your firm may have been hired by APMC, not Elf-Man LLC. <http://prezi.com/au9es8zrsnm1/themanako123/>

Here are Mr. Lamberson's Amended Initial Disclosures to include Messrs Achache and Molina as witnesses (we already had Ms. Romanoff listed.) We have also provided these by USPS.

We also added two exhibits:

1. Mr. Molina's BPO Cebu explanation of APMC. Another of our favorite lines from Mr. Molina's explanation: "APMC stays in the background where they are invisible, but we [APMC] are the center (i.e. 'we make things happen.')
2. A list of the Vision Films movies uploaded to bittorrent by "Hero Master." Turns out the allegations at paragraph 45 of our Second Amended Answer, Affirmative Defenses and Counterclaims were just the tip of the iceberg. Not only did "Hero Master" initially seed *Elf-Man* and *Blood Money* before their public release, he/she also uploaded the majority of the Vision Films movies on the "APMC/Vision Films Schedule A" prior to their public release. So, it appears our suspicions are correct and coming to light: Vision Films uploads the movies and then Vision Films hires APMC to track and sue everyone who takes the bait. You said our allegations of "barratry" were scandalous, but it appears they are true.

We are still waiting for a revised explanation to the one provided regarding the relationship of the "investigators" to *Elf-Man*. Our letter dated April 16, 2014 in this regard is attached. You say we have presented "nothing" to support our claim, so maybe you missed the six numbered detailed points starting at number 3 on page 2 of the April 16 letter. Plus, now that we have Mr. Molina's BPO Cebu explanation, it seems your firm's April 14 explanation of the "paperless" engagements of Crystal Bay, Inc. (sic, actually Crystal Bay Corporation) and Mr. Macek must be inaccurate, especially since Mr. Molina's explanation indicates "the BPO Cebu office will be receiving these declarations from Daniel Macek." "These declarations" are the Declarations to Support Motions for Expedited Discovery – the ones Mr. Molina's explanation says are to be included in every case, but which are missing from the ED WA and WD WA *Elf-Man* cases. We think Elf-Man LLC is in a difficult position regarding the explanation provided the court, compared to Mr. Molina's explanation, especially since your firm will have to address the truth of the relationship in its reply brief re the

Noerr-Pennington issues (and the impending discovery.) We are prepared to move to submit Mr. Molina's entire explanation as a sur-reply.

Tomorrow, we will be sending a new set of discovery directed at the relationship/correspondence of APMC to the lawyers of record for the *Elf-Man* cases. If we understand Mr. Molina's explanation correctly, it appears that your law firm communicates directly with APMC's BPO Cebu. The corporate disclosure statement required by our court does not include any disclosure of APMC or BPO Cebu or Vision Films, so we cannot imagine how *Elf-Man* LLC could claim your law firm's communications with APMC and its BPO Cebu are privileged. Please be prepared that we will seek full discovery of your firm's communications (and the Crowell firm's communications) with APMC/BPO Cebu and its "legal team." If you have some explanation how these could be privileged communications, we would like to hear it now before we serve this discovery tomorrow.

Your client's house of cards has fallen. As Mr. Molina's explanation shows, APMC's entire business model is regrettably based on two faulty assumptions: (i) that capturing one uploaded packet from a swarm member equals evidence of infringement, even if uncorroborated, and (ii) that these single wispy captured packets can somehow be admissible evidence, despite the foreign un-licensed investigator's direct contingency interest in turning the data into a judgment. All of the rest – i.e. APMC's "sales team" trying to sell the data, APMC's litigation writing services from the Philippines, APMC's mistakes about the owners of the exclusive rights, APMC's lack of understanding of *Righthaven*, the sideline of South Dakota's delinquent Crystal Bay Corporation, etc. are just icing on the huge mess of a cake in which your client finds itself with the current state of our ongoing investigation.

We think Judge Rice will be quite interested in the truth of APMC's role in selling data and packaged defective lawsuits against thousands of innocent people. APMC's business model is not lawful, especially in the post-*Righthaven* world, and opacity about APMC's existence and its relationship to the supposed real party in interest does not make the situation any better.

[REDACTED] so please consider this information:

1. Mr. Lamberson didn't copy the work.
2. Your client has no admissible evidence that Mr. Lamberson copied anything. For example, we think the response to RFP #12 is a hoot: Apparently, Mr. Lamberson copied thousands of works from 11/25/12 to 12/23/12 – apparently, he volitionally sought and copied numerous works in German, and Dutch, and Mandarin, and French, and Korean, and Russian, and Spanish, and Italian, and Greek, and Japanese. Mr. Lamberson is an interesting person, but is not multi-lingual. We told you about Mr. Lamberson's computer in discovery, so it should come as no surprise that it lacks the storage capacity to handle even one day of the copying alleged in response to RFP #12 at an alleged rate of over 100Gb per day. Another amusing example, the geo-location of the PCAP data you gave us indicates the request by the "investigator" for the packet from the IP address associated with Mr. Lamberson shows that the investigator's request came from an office building in Amsterdam, and the list of works allegedly infringed includes "Netherlands Top 40." Mr. Lamberson loves music, but does not listen to the Netherlands Top 40 – but maybe the APMC person in Amsterdam does.
3. You don't know what was captured by the one-second upload – it might be the disclaimed portions of the work.
4. Vision Films appears to own the exclusive distribution rights – the right implicated by the investigator uploading the one bit. But the time to amend to add parties is passed.
5. Vision Films appears to be seeding its own work. Each (unknown, unpopular) work on Schedule A was uploaded by the same person (Hero Master) prior to its public release. We will undertake discovery as to this Hero Master once we see how Vision Films intends to comply with our first subpoena.

6. APMC is not “retaining” CBC under a paperless/termless relationship. The explanation makes no sense as our 4/16 letter demonstrates.
7. APMC may not have US licensed counsel preparing its pleadings.
8. APMC is selling testimony on a contingency that you say is “withdrawn” but without any explanation of what the relationship is or was.
9. We think the judge will force your client to present its witnesses in Spokane for deposition, and we cannot imagine the judge requiring us to pay these witnesses anything. Even if we never depose them, we cannot imagine how Messrs Patzer and/or Macek could ever offer any admissible evidence to our court when they do come to Spokane in the summer of 2015 for the jury trial.
10. Does your client(s) understand the risk of Fogerty v. Fantasy? We must admit we were a little worried at first when considering a money judgment against Elf-Man LLC that might not get paid, but now we see APMC behind the scenes. For example, we see APMC/New Alchemy has over 25 posted job listings in Cebu for technicians and administrative staff and the like, so it must have some resources to meet the inevitable defense attorneys fees and sanctions judgments it will face in this case.
11. Does your client(s) really want to undertake discovery on all of these entirely relevant points? I am certain you can sense our tenacity and that we have no reason to back down. [REDACTED] or we complete discovery, go to trial and win the fees. Why would your client choose the latter?
12. We could go on. If for some reason this “information” is not enough to help you formulate a settlement recommendation – just let us know and we can provide more.

We have tried to be patient as your law firm has avoided discovery and the merits of the lawsuit. But our patience is over. Mr. Lamberson is innocent and the canned Philippines lawsuit your client bought is not one that comports with the factual and legal investigatory requirements of Rule 11. Mr. Molina’s explanation exposes APMC’s entire suit-selling scam. Hero Master’s prolific but signature uploading exposes Vision Films’ reason for its APMC agreement. Elf-Man LLC may not have known of any of this, but someone did.

[REDACTED] unless you can explain how your client could possibly prevail, we intend to continue to engage in discovery to reveal the truth about this case.

[REDACTED]

[REDACTED]

Thank you.